

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

North Shore Gas Company)	
)	ICC Docket No. 11-0280
Proposed General Increase in Natural Gas Rates.)	
)	consolidated with
The Peoples Gas Light and Coke Company)	
)	ICC Docket No. 11-0281
Proposed General Increase in Natural Gas Rates.)	

BRIEF ON EXCEPTIONS

On behalf of

Interstate Gas Supply of Illinois, Inc.

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BRIEF ON EXCEPTIONS OF INTERSTATE GAS SUPPLY OF ILLINOIS, INC

Interstate Gas Supply of Illinois, Inc. (“IGS”), by and through its attorneys, DLA Piper LLP (US), pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (“Commission”) (83 Ill. Admin. Code 200.830), respectfully submits its Brief on Exceptions in the instant proceeding addressing the Administrative Law Judges’ Proposed Order (“Proposed Order”) in this proposed general increase in electric rates of North Shore Gas Company (“North Shore”) and the Peoples Gas Light and Coke Company (“Peoples”) (collectively, the “Companies” or “Utilities”). Appendix A to this Brief on Exceptions contains proposed replacement language for the Proposed Order.

I.

INTRODUCTION

In order for the competitive energy markets to operate efficiently and effectively in Illinois, the Commission must stand guard vigilantly to oppose anticompetitive behavior, and take proactive steps to remedy market flaws that have been identified. In the last rate case filed by the Companies, substantial evidence was presented regarding the Companies’ dysfunctional mass market choice program, and over the Companies’ assertion that no changes were necessary, the Commission appropriately directed certain revisions. In this proceeding, in the face of clear

evidence of continued cross-subsidies, the Companies simply have repeated their mantra that nothing is wrong, requesting that they be allowed to continue business as usual. Unfortunately, to a great degree, the Proposed Order would allow them to do just that, denying consumers the benefits of a robust competitive market that the Commission has sought to foster.

Administrative Fees

The main focus of IGS's involvement in this proceeding has been the Companies' Choices For You program, a competitive program under which all residential and small commercial customers have the opportunity to choose their natural gas supplier, rather than buy their supply from Peoples or North Shore. In addition to pointing to the clear Commission direction given in the prior rate case, IGS developed extensive record evidence showing that the current structure of the Choices For You program -- in particular, with respect to administrative fees -- includes anti-competitive cross subsidies.

The evidence developed in this proceeding -- including admissions by the Companies' witness Mr. McKendry on cross-examination (quoted later in this Brief on Exceptions) -- confirms that the Companies do *not* recover administrative fees in a fair and equitable manner that is competitively neutral and that respects cost causation principles. The Companies improperly bill Choices For You customers for the costs associated with services such as generating and reconciling the bills for sales customers, as well as collections costs that the Companies incur to recover commodity-related expenses. (*See, e.g.*, Tr. 690:22-694:17; IGS Initial Brief at 12-24; IGS Reply Brief at 9-17.) The precise amount by which Choices For You customers are overbilled cannot be determined in this proceeding, because the Companies have failed to accurately track these costs. (*See* Tr. 666:13-668:4; IGS Cross Exs. 12 and 13; IGS Initial Brief at 22-25.) Moreover, because the Choices For You program is an option that is

provided to all eligible customers, the costs associated with administering the Choices For You program should be recovered from all eligible customers through base rates, rather than charging customers a toll for participating in the competitive market.

In short, the Companies should not be allowed to continue allocating administrative fees in an anti-competitive manner. IGS offered several straightforward steps to eliminate those cross-subsidies, consistent with the Commission's policies favoring competition. (*See, e.g.* IGS Initial Brief at 3-4; IGS Reply Brief at 2-3.) Specifically:

- **Choices For You customers should not be charged for administrative costs they do not cause.** Currently, the Companies charge all customers (both sales and Choices For You customers) for administrative functions that support sales customers only. This creates an inappropriate, anti-competitive subsidy favoring sales customers paid for by Choices For You customers. In part due to the fact that the Companies do not track the cost information for each function supporting their proposed Administrative Fees, IGS recommends that all administrative fees applicable to sales and Choices For You customers be charged to both sales and Choices For You customers. IGS recommends that the Commission require the Companies to collect the more detailed information and present it in the Companies' next rate case.
- **The costs to administer the Choices For You program should be borne by all customers who are eligible to participate in the program.** Charging all customers for Choices For You administration would be in line with the way in which similar costs are recovered, and is consistent with cost-causation principles, since *all* customers who have the option to enroll in Choices For You benefit from that program.

(*See* IGS Reply Brief at 3.)

Unfortunately, the Proposed Order gives the Companies exactly the "free pass" that they seek, allowing the Companies to continue the anti-competitive allocation of administrative fees. IGS respectfully disagrees with the Proposed Order, and requests that the Commission take action to eliminate those subsidies.

Warranty Products

The second focus of IGS's attention in this proceeding has been on warranty product issues – specifically on the Companies' improper subsidization of their affiliate, Peoples Energy

Home Services (“PEHS”), in support of PEHS’s Pipeline Protection Program (“PPP”) warranty product, and the consequent discriminatory treatment of companies that are unaffiliated with the utilities that participate in the warranty market. Substantial record evidence highlights the Companies’ unfair and anti-competitive use of their billing and solicitation systems relating to warranty products. (*See* IGS Initial Brief at 6-9; IGS Reply Brief at 9.) In short, the Companies give a discriminatory advantage to PEHS by giving PEHS access to billing and solicitation systems that non-affiliated companies simply do not and cannot have under current circumstances. Staff also identified presented compelling evidence about numerous irregularities and problems with the Companies’ treatment of PEHS.

Accordingly, IGS applauds the Proposed Order’s finding that the Companies are improperly subsidizing their affiliate, PEHS, in support of PEHS’s PPP warranty product. IGS supports the Proposed Order’s direction to institute an investigation of the Companies’ warranty-related practices. (*See* Proposed Order at 96.) IGS understands that the investigation will cover all warranty-related issues identified by Staff as well as the additional warranty-related issues identified by IGS, consistent with the testimony of Staff expert witness David Sackett, when he discussed the scope of the investigation in his live testimony on redirect at the evidentiary hearing. (*See* Tr. at 770:10-14.)

V.

OPERATING EXPENSES

C. Contested Issues

8. Revenues

b. Other Issues Relating to PEHS and PEPP, Including Staff Request for Investigation

The Proposed Order accepts Staff’s recommendation that the Companies initiate a docket to investigate the support the Companies provide to Peoples Energy Home Services (“PEHS”) for the Pipeline Protection Program (“PPP”) warranty product. (*See* Proposed Order at 96.) The record contains extensive evidence raising serious questions about the manner in which the Companies support PEHS. IGS applauds the Proposed Order’s recommendation, which is well supported by the record, and urges the Commission to preserve this finding and mandate.

Staff has proposed, and the Proposed Order endorses, the initiation of an investigation into the Companies warranty-related practices, including access to billing and solicitation services, as directly explained by Staff witness Mr. Sackett during his live re-direct testimony at the evidentiary hearing. (*See* Tr. at 770:10-14 (“So I think that the issue of access to those services, billing services, repair services and solicitation would be more appropriately addressed in that [investigation] proceeding and I do intend to pursue that in that proceeding.”).) IGS appreciates and certainly supports Staff’s viewpoint of the scope of the investigation and supports that scope to the extent that the Commission does not address certain warranty-related issues directly in this proceeding. As explained in its briefs, IGS presented substantial record evidence in this proceeding that could justify Commission action *in this proceeding* to address the Companies discriminatory provision of billing and solicitation services to their affiliate company in the warranty market. (*See, e.g.*, IGS Ex. 2.0 at 24:587-27:661; IGS Cross Exhibits 1

and 2; IGS Initial Brief at 4, 6-9; IGS Reply Brief at 9.) However, IGS accepts that the Proposed Order's direction for the initiation of an investigation, with the understanding that that the investigation will cover all warranty-related issues identified by Staff as well as the additional warranty-related issues identified by IGS, consistent with Mr. Sackett's testimony.

c. Warranty Products (Revenue and Non-Revenue)

Please see discussion of warranty-related issues in Section V.C.8.b. above.

XI.

TRANSPORTATION ISSUES

Introductory Statement

Respectfully, the Proposed Order gives the Companies a "free pass" on their anti-competitive treatment of administrative charges, recommending that the Commission allow the Companies to continue to charge Choices For You customers for costs that they do not cause and from which they do not benefit.

IGS demonstrated the Companies charge Choices For You customers for costs that they do not cause. Specifically, the Companies charge all customers (including Choices For You customers) for the same or similar services as the Companies charge exclusively for Choices For You customers in addition to their generally applicable administrative fees. (*See, e.g.*, IGS Cross Ex. 11; Tr. 674:9-677:12, 678:5-21; IGS Ex. 1.0 at 42:1000-43:1015; IGS Initial Brief at 12-13; IGS Reply Brief at 11-12.) IGS also presented evidence that Choices For You customers do not cause non-commodity uncollectable costs, an issue that the Companies did not (and, as admitted in their responses to IGS Data Requests, could not) rebut. (*See, e.g.*, IGS Cross Exs. 17 and 18; IGS Ex. 1.0 at 38:906-918, 39:944-40:966; IGS Ex. 2.0 at 20:471-482; IGS Initial Brief at 13-14; IGS Reply Brief at 11.)

IGS also demonstrated that the Companies currently give sales customers a “free” option -- the option to switch suppliers -- at the expense of the Choices For You customers. For similar optional programs and services that the Companies offer (e.g. energy efficiency programs and call center services), the Companies charge all customers that benefit from the Companies offering the option. Only for customer choice do the Companies charge a toll solely to the customers who take service under the program. (*See* IGS Ex. 1.0 at 34:811-35:856; IGS Initial Brief at 18.)

The Companies failed to provide a credible rebuttal to the evidence and arguments that IGS presented on these administrative fee issues. Indeed, the admissions of Companies’ witness Mr. McKendry make it quite clear that the Companies currently allocate and recover administrative fees in an anti-competitive manner that fails to respect cost-causation principles. (*See* Tr. 690:22-694:17.)

It appears that the sole analysis from the Proposed Order on IGS’s arguments from this section -- which specifically relate to whether Choices For You customers are forced to pay for sales costs that they do not cause -- is a conclusory sentence found in the Commission Analysis and Conclusions portion of Section XI.E.1 (“Aggregation Charge”). (*See* Proposed Order at 230.)

The analysis of the Proposed Order is complicated due to the Proposed Order apparently misplacing the summary of some of IGS’s arguments. That is, although IGS did not present arguments regarding Section XI.D.1 (“Large Volume Transportation Program”/“Administrative Charges”), the Proposed Order includes a summary of some of IGS’s arguments in that portion of the Proposed Order. (*Compare* Proposed Order at 193-197 *with* IGS Draft Proposed Order at 11-15 *and* IGS Initial Brief at 10-16 *and* IGS Reply Brief at 11-13.) The arguments that the

Proposed Order includes in Section XI.D.I should be included in Section XI.C (“Administrative Charges”) instead. As a result, it is not possible to definitively determine whether the Proposed Order even attempts to analyze IGS’s argument intended for Section XI.C. (*See* Proposed Order at 196-197 (summarizing IGS position, focusing on Choices For You issues).) To the extent that the Proposed Order does try to address IGS’s position in Section XI.C, the Proposed Order’s analysis is incorrect.

IGS’s arguments intended for Sections XI.C and XI.E.1 -- although both concluding that the preferred resolution is that administrative charges should be borne by all eligible customers -- are not interchangeable:

- **Section XI.C** identifies substantial evidence detailing several charges that are borne by all Choices For You-eligible customers, but that only sales customers cause. (*See* IGS Draft Proposed Order at 11-15.) The inappropriate charges to Choices For You customers take two forms: (1) services for which Choices For You customers are double charged; and (2) costs that Choices For You customers do not cause in any material way (such as non-commodity uncollectible costs). (*See* IGS Draft Proposed Order at 11-15.) The upshot of this is that Choices For You customers are paying for costs which they neither cause nor benefit from.
- **Section XI.E.1** identifies the ways in which all eligible customers benefit from the ongoing existence of the Choices For You program, providing substantial evidence that not only customers who participate reap benefits. (*See* IGS Draft Proposed Order at 15-19.) Accordingly, the costs for the Choices For You program should be allocated to all customers who have the option to participate in the Choices For You program.

IGS respectfully requests that the Commission consider separately the arguments regarding administrative fees that IGS presented in Sections XI.C and XI.E.1 of the Common Outline in its Initial and Reply Briefs. IGS has provided proposed replacement language to the Proposed Order’s Sections XI.C and XI.D, and XI.E.1 in both the summaries of party positions and “Commission Analysis and Conclusions” subsections. (*See* Attachment A at 5-14.)

The Commission, of course, has long-standing policies encouraging competitive markets and ensuring accurate cost allocation to the maximum extent reasonably possible. Inaccurate

allocation of administrative fees obviously clashes with the Commission's policy of seeking accurate cost allocation. Moreover, because the inaccurate allocation of administrative fees creates an uneven playing field between the Companies and Alternative Gas Suppliers, it is an anti-competitive outcome that contradicts the Commission's pro-competitive policy.

C. Administrative Charges¹

IGS respectfully urges the Commission to direct the Companies to immediately halt the highly inequitable practice of charging Choices For You customers for costs that those customers do not cause and that those customers do not benefit from. (*See* IGS Ex. 2.0 at 17:417-19:466; IGS Initial Brief at 12-14; IGS Reply Brief at 11-13.)

Choices For You customers are paying twice for certain functions, while sales customers are paying only once:

- **Bill generation.** Although commodity-related billing costs are recovered through base rates, costs for Choices For You billing are recovered through the Choices For You administrative fee. (*See* Tr. 675:18-677:12; *see also* IGS Cross Ex. 11.)
- **Bill reconciliation.** Similarly, costs incurred to reconcile commodity-related bills are recovered through base rates, while costs for reconciling Choices For You bills are recovered through the Choices For You administrative fees. (*See* Tr. 678:5-21; *see also* IGS Cross Ex. 11.)
- **Call center.** If a sales customer has a question related to the PGA, the customer's call goes through the call center that takes "general calls," whose costs are recovered through generally applicable administrative fees; however, Choices For You questions are routed to the Gas Transportation Department, whose costs are recovered through the Choices For You administrative fee. (*See* Tr. 674:9-675:17; *see also* IGS Cross Ex. 11 (the Companies' Responses to Data Request IGS 3.05).)

The inequity is explicit: although sales-specific charges are recovered through base rates (*i.e.* administrative fees to all customers, including Choices For You customers), Choices For You-specific costs are borne only by Choices For You customers. The Choices For You

¹ Throughout this proceeding, IGS has consistently used the term "administrative fees" – the Common Outline refers to "administrative charges." For purposes of this Brief on Exceptions those two terms are synonymous.

customers do not receive any credit associated with the components of sales-specific services that are being recovered through base rates. As a result, the Choices For You customers are improperly billed twice for certain services (once through base rates and then again through the Choices For You charge).

In addition to Companies' witness Mr. McKendry's repeated admissions about this inequitable double recovery of costs, IGS Cross Ex. 11 contained many additional examples where commodity-related charges are recovered from all customers -- both sales *and choice* -- while similar Choices For You-related charges are recovered only from Choices For You customers. (*See* IGS Cross Ex. 11; *see also* IGS Ex. 1.0 at 42:1000-43:1015 (identifying apparent overlap); IGS Ex. 2.0 at 17:417-19:466.) As a result, Choices For You customers are forced to subsidize sales customers' customer support functions by paying a share of sales customers' costs that Choices For You customers simply do not incur. (*See, e.g.* IGS Ex. 1.0 at 42:1000-43:1015.)

In addition to the examples of costs incurred in support of sales customers that are paid by Choices For You customers and similar instances identified in IGS Cross Ex. 11, Choices For You customers pay additional costs that those customers do not cause. For example, no party disputes that Choices For You customers do not cause commodity-related uncollectable costs. (*See, e.g.* PGL Ex. 12.0 at 14:313-15:317; NS Ex. 12.0 at 13:273-278; *see also* IGS Ex. 1.0 at 36:878-39:888 (citing with approval Peoples and North Shore testimony).) IGS has also established that Choices For You customers do not create non-commodity-related uncollectable costs. (*See, e.g.,* IGS Ex. 1.0 at 38:906-918, 39:944-40:966; IGS Ex. 2.0 at 29:471-482.) Simply stated, due to payment priority rules, Alternative Retail Gas Suppliers ("ARGS") simply do not get paid unless the Companies' non-commodity charges are paid. (*See* IGS Ex. 1.0 at 39:944-

40:950.) As a result, ARGS cannot afford to take on customers without excellent credit, and are forced to drop customers who do not make timely and full payments. (*See id.* at 40:950-953.) Notably, the Companies admitted that they do not track the uncollectable rates of Choices For You customers, and IGS offered un rebutted evidence that Choices For You customers create *de minimis* non-commodity-related uncollectable costs. (*See, e.g.*, IGS Cross Exs. 17 and 18 (the Companies' Responses to IGS Data Requests 3.01 and 3.02, respectively); IGS Ex. 1.0 at 38:906-918, 39:944-40:966; IGS Ex. 2.0 at 20:471-482.) Thus, due to the evidence that Choices For You customers cause insignificant non-commodity-related uncollectable costs, those costs also should not be recovered through the generally applicable administrative charge, unless there is a corresponding credit to Choices For You customers.

The Companies' simultaneous admissions that they double bill Choices For You customers, and that they charge Choices For You customers for costs they do not cause is compounded by the Companies' refusal to more accurately track cost causation. That is, the Companies took the position that its cost allocation methodology was sound and did not need updating, *despite admitting* that Choices For You customers are billed for costs that sales customers cause and that Choices For You customers do not receive a corresponding credit. (*See* Tr. 677:9-678:21.) This argument violates the Commission's long-held principles of assigning costs to causers and avoiding cross-subsidies.

Credible, compelling evidence presented by IGS, as well as contradictory admissions by the Companies, demonstrates what amounts to nothing less than "double billing" of Choices For You customers. That result is anti-competitive, highly inequitable, and contrary to long-standing Commission policy in favor of fair and accurate cost allocation and cost recovery. The Proposed Order should be modified accordingly.

E. Small Volume Transportation Program (Choices For YouSM or “CFY”)

1. Aggregation Charge

The Proposed Order’s finding with regard to the Aggregation Charge states as follows, in full:

The Commission agrees with Staff and the Utilities and finds that IGS’s recommendation will not be adopted inasmuch as **sales customers do not cause the costs that are incurred by the GTS department and related IT costs and therefore they should not be assessed any of the costs.** There is no reason for sales customers to bear any portion of this cost. **We further find no need to mandate the Utilities to undertake a detailed cost-causation analysis.**

(Proposed Order at 230 (emphasis added).) The Proposed Order lacks any consideration or evaluation of the substantial evidence presented by IGS that sales customers do *benefit* from the GTS department expenditures, specifically from the ability to switch suppliers at any time they choose in order to take advantage of the competitive market. (See IGS Initial Brief at 16-22; IGS Reply Brief at 13-15.) A decision to decline implementation of either IGS’s primary or alternative requests for relief would give the Companies a complete “free pass” in direct contradiction to the weight of the record evidence and the clear Commission policy on cost allocation and fair competitive markets. (See, e.g., IGS Initial Brief at 22-25; IGS Reply Brief at 13, 17.)

Based on the discussion above and herein, IGS presents proposed replacement language to the Proposed Order’s “Commission’s Analysis and Conclusions” for Section XI.E.1. (See Attachment A at 12-14.)

- a. All Eligible Customers Should Pay
The Costs Associated With Providing
The Option To Enroll In “Choices For You”

The ongoing operation of the Choices For You program benefits *all eligible customers*, not only Choices For You customers. As IGS explained,, all customers benefit from the ongoing

operation of the Choices For You program, which allows every individual eligible customer to exercise the option to choose an alternative supplier or the Companies' service at any time. (*See, e.g.,* IGS Initial Brief at 17-22; IGS Reply Brief at 13-17.) The Companies' witness Mr. McKendry agreed on cross-examination that all eligible customers share this benefit. (*See* IGS Initial Brief at 19 ((citing Tr. 692:14-693:10 (Cross examination of Companies' witness Mr. McKendry); IGS Reply Brief at 13-14.)

As IGS expert witness Mr. Parisi explained:

All customers with the option to participate on the Choices For You program are being provided with something of value as a result of the utilities implementing a customer choice program -- they are given the option to change suppliers and to take advantage of price and product offers from the competitive market. As RGS explained in the 2009 Peoples/North Shore Rate Case, competition benefits all ratepayers, regardless of whether the individual ratepayer chooses a competitive supplier or remains on the utility option. In addition, if and when a particular customer does decide to choose, an additional cost barrier (in essence, a switching fee) is removed.

(IGS Ex. 1.0 at 33:788-34:796.) The transcript of Mr. McKendry's cross-examination demonstrates that Mr. McKendry clearly and unequivocally agreed with this point:

Q So Mr. Parisi is suggesting that all customers who have the opportunity to participate in the Choices For You program should pay a portion of the administrative fees associated with that program, right?

A Right.

Q And the Companies did not adopt Mr. Parisi's suggestion, right?

A Correct.

Q Instead, the Companies wish to continue their practice of charging Choices For You administrative fees to Choices For You suppliers, right?

A That's right.

Q And is that methodology of collecting the administrative costs consistent with the way in which Nicor recovers those costs?

A No.

- Q Now, you state in your rebuttal testimony at Page 4, Lines 78 to 80 that, quote, It makes sense for only those customers and suppliers participating in those programs to be responsible for the costs of those programs, these are costs for supporting these programs to these customer groups and suppliers only, right?
- A That's correct.
- Q Let's take an average residential, small commercial customer. That's a sales customer, okay?
- A Okay.
- Q And that sales customer can become a Choices For You customer at any time, right?
- A Right.
- Q It's an option that the Utilities have provided to that customer, right?
- A Right.
- Q Do you agree that the Companies have budgeted for Gas Transportation Services Department costs such that if additional customers switch from sales to Choices For You, the Companies would be able to serve those customers?
- A That's right.
- Q So the Companies have budgeted and planned for the contingency that additional sales customers will become Customer Choice customers, right?
- A Correct.
- Q And there's a cost associated with the Utilities providing eligible customers the option to be able to switch, right?
- A Correct.
- Q And we'd agreed earlier that as a general matter, if a customer group benefits from a program, it should be allocated its fair share of the cost, right?
- A Correct.
- Q And that concept that the customer group that benefits from a program that you pay its fair share of the program, is consistent with the way in which the Companies administer other programs, right?

A Right.

Q So, for example, the Companies have an energy efficiency program, right?

A Yes.

Q And all customers eligible to participate in that energy efficiency program pay the costs for that program, right?

A Yes.

Q But less than 100 percent of the eligible customers actually do participate in the program, right?

A Right.

Q And, similarly, the Companies maintain a customer service call center that's available to all customers, right?

A Right.

Q And all customers pay for that, right?

A Correct.

Q Because all of those customers are eligible to use it, right?

A Eligible, yes.

Q But, again, less than a hundred percent of the customers who pay for the call center actually use the call center, right?

A Yes.

(Tr. 690:22-694:17) (emphasis added).

Thus, recovering the Choices For You from all eligible customers would be consistent with the methodology that the Companies use for other programs, that the Commission has approved for the Nicor Gas choice program, and that the Commission directed the Companies to consider implementing in the workshops following the Companies' 2009 Rate Case.

In the Companies' 2009 Rate Case Staff had tried -- in the context of energy efficiency programs -- to argue the position that the Companies and Staff are articulating in the present

case, but that Staff's argument was rejected by the Commission. (*See* IGS Ex. 1.0 at 34:809-35:827 (citing the Commission's Final Order in the Companies' 2007 Rate Case); *see also* IGS Initial Brief at 20-21.) In the Final Order from the Companies' 2007 Rate Case, the Commission specifically endorsed the concept that all eligible customers should pay "**as long as the benefits are equally available to all customers.**" ICC Docket Nos. 07-0241/0242 (cons.), Final Order dated February 5, 2008 at 163-64 (emphasis added).) The Companies took the opposite position -- *i.e.* arguing that because all could potentially benefit, all had to pay -- in their 2007 Rate Case and persuaded the Commission. (*See id.*)

The Choices For You program benefits all eligible customers in precisely the same manner that the Companies' call center and Energy Efficiency Program benefit all customers (including those that never call the call center or apply for funding for an energy efficiency project), because those resources remain available for all customers who may use them if they so choose. (*See, e.g.* IGS Initial Brief at 20-21; IGS Reply Brief at 13-15.) It is the availability of those resources -- and not the question of how many customers actually use those resources -- that justifies that all customers pay the associated costs. The same principle applies to the Choices For You program. (*See* IGS Initial Brief at 19-21; IGS Reply Brief at 14-15.) Furthermore, the evidence firmly established that *not* charging all eligible customers for Choices For You administrative fees creates an anti-competitive switching fee -- an unjustified barrier to customer switching -- that is contrary to the Commission's policy favoring competition. (*See, e.g.*, IGS Initial Brief at 20; IGS Reply Brief at 14.)

Although the Companies and Staff advanced bald assertions that sales customers do not benefit from the ability to switch and that the call center and energy efficiency programs are not appropriate comparisons, neither provided persuasive support for those assertions. (*See, e.g.*,

Staff Corr. Reply Brief at 100, 102; NS-PGL Corr. Initial Brief at 160-161.) Indeed, fairly examined, these assertions crumble. For instance, and perhaps most telling is the Companies' persistent attempt to twist the simple point about call centers. The Companies have readily admitted that not all customers use the call centers, but nobody questions that all customers should pay for call centers because the availability of call centers provides a resource to all customers. Yet, the Companies persist in purporting to misunderstand this point: the point is not the extent that sales customers use the GTS call center, but that even though all customers (sales or Choices For You) are charged for the general call center, not every customer actually calls the call center. (*Compare* NS-PGL Reply Brief at 160-161 *with* IGS Initial Brief at 19-20 *and* IGS Reply Brief at 15.) The Companies do not -- and cannot -- deny that even customers who do not call the general call center are still charged for the general call center, on the theory that those customers have access to the call center. (*See* IGS Initial Brief at 20-21; IGS Reply Brief at 15.) The Companies offer no material distinction between their general call center, where all customers pay for its operation on the chance that they will use it, and the Choices For You program, where every eligible customer may switch in (or out) freely.²

Similarly, with regard to the Companies' Energy Efficiency Program, the Companies successfully argued in their 2007 Rate Case that because all customers could take actions leading to benefits, all customers should pay. (*See* IGS Ex. 1.0 at 34:809-35:827 (citing the Commission's Final Order in the Companies' 2007 Rate Case).) As noted above, the Commission plainly ruled in the Companies' 2007 Rate Case that costs associated with programs having benefits "equally available to all customers" should be recovered from all eligible

² The Companies also have attempted to suggest that since the Choices For You charges are collected from the Alternative Gas Suppliers participating in the Choices For You program that they are not charges "on Choices For You customers." (*See, e.g.,* NS-PGL Reply Brief at 84; NS-PGL Initial Brief at 161.) However, this is a distinction without difference, because the only customers from which Choices For You Suppliers can collect this toll are those who are taking service under the Choices For You program.

customers, even less than 100% of eligible customers actually take advantage of the program. ICC Docket Nos. 07-0241/0242 (cons.), Final Order dated February 5, 2008 at 163-64.)

Furthermore, there is no dispute that in Nicor Gas's most recent rate case, the Commission directed Nicor to recover the administrative costs associated with its choice program from all eligible customers. (*See* ICC Docket No. 08-0363, Final Order dated March 25, 2009 at 128.) This is of heightened significance, since in the Companies' 2009 Rate Case, the Commission identified the Nicor Gas choice model as the standard which the Companies should either adopt or explain why the Nicor approach was not being adopted. (ICC Docket No. 09-0166/-0167 (cons.) Final Order dated January 21, 2010 at 253, *see id.* at 260.) The Companies have done neither. Instead, the Companies seek to continue "business as usual" and impose a toll that customers must pay if they want to take service under the Choices For You program. (*See* Tr. 650:21-653:16.)

Because IGS presented substantial evidence (without substantive opposition) that all eligible customers benefit from the Choices For You program, IGS respectfully requests that the Commission address -- and adopt -- IGS's recommendation that Choices For You administrative fees be charged to all eligible customers through base rates. (*See, e.g.*, IGS Ex. 2.0 at 3:60-62.)

b. Alternatively, The Companies Should Be
 Ordered To Allocate Gas Transportation Services In A
 A Manner That More Accurately Reflects Cost Causation

In its Initial Brief and Reply Brief, IGS recommended that, if the Commission does not charge Choices For You costs to all eligible customers, the Commission should require the Companies to undertake a detailed cost-causation analysis of GTS costs. (*See* IGS Initial Brief at 22-24; IGS Reply Brief at 17.) Nevertheless, because the Proposed Order appears not to address the points that IGS made in Section XI.C in its Initial Brief, Reply Brief, and Draft Proposed Order, the Proposed Order does not engage the issues of double-billing or Choices For You

customers paying for costs through generally applicable administrative fees that they do not cause. (See IGS Initial Brief at 10-16, 22-25; IGS Reply Brief at 11-13, 17; IGS Draft Proposed Order at 11-15.) The Proposed Order merely states: “We further find no need to mandate the Utilities to undertake a detailed cost-causation analysis.” (Proposed Order at 230.) That conclusion does not appear to be supported by factfinding, in contravention of the Commission’s rules of procedure that a Proposed Order: “includ[e] a statement of findings and conclusions and the reasons or basis therefore, on all the material issues of fact, law or discretion presented on the record.” (83 Ill. Admin Code § 200.820(a)(1).) IGS urges the Commission to adopt its proposed findings of fact for Section XI.C and XI.E.1 and, in the event the Commission does not implement IGS’s recommendation to charge Choices For You administrative fees to all eligible customers, the Commission adopt IGS’s alternative recommendation that the Commission force the Companies to undertake a detailed cost analysis of its various administrative fees.

2. Purchase of Receivables (withdrawn)

The Proposed Order accurately relates that the initial IGS proposal for implementation of a Purchase of Receivables program was withdrawn during the course of the proceeding, and therefore found that “there is no issue for the Commission to decide.” (Proposed Order at 231.) IGS agrees with the characterization of what occurred during the proceeding and the conclusion that no Purchase of Receivables issue remains in the case or requires decision or comment. Accordingly, IGS is not presenting any exceptions to this section of the Proposed Order.

XII.

CONCLUSION

IGS’s focus in this proceeding is focused and straightforward: accurate cost allocation, consistent with long-standing Commission policy, requires fair and accurate allocation of administrative fees. Similarly, non-discriminatory treatment of companies participating in the

warranty product market requires that companies that are not affiliate with the utilities should have access to billing and solicitation services provided by the utilities to their affiliate. Accordingly, IGS has urged the Commission to make “[a] few simple fixes [that] will greatly ameliorate the identified imbalances.” (IGS Initial Brief at 26; *see also* IGS Reply Brief at 18.)

IGS applauds the Proposed Order taking one very positive step, namely requiring the Companies to open an affiliate interest investigation docket. However, the Proposed Order erred in (1) failing to grant IGS’s requested relief for non-tariffed services and administrative fees, and (2) providing minimal to no factual findings on which to base its conclusions. IGS respectfully urges the Commission to mitigate those two errors in the Proposed Order consistent with the language that IGS has suggested.

WHEREFORE, IGS respectfully requests that the Commission enter an Order:

1. Requiring the Companies to collect Choices For You administrative fees from all customers through base rates;
2. In the alternative, requiring the Companies to undertake detailed cost-causation analysis of the administrative fees to all customers and the Gas Transportation Services allocation factors;
3. Continuing to accept Staff’s proposal to open an investigation into the Companies’ practices supporting their affiliate and its warranty product, including all issues that IGS and Staff identified associated with warranty-related practices; and
4. Granting any additional relief that the Commission determines to be in the interests of justice.

Respectfully submitted,

INTERSTATE GAS SUPPLY OF ILLINOIS, INC.

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